The Solicitors' Journal

VOL. LXXXIII. **Saturday, September 30, 1939.** No. 39

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Legal Viscounts.

THE title of Viscount which has just been conferred upon LORD MAUGHAM in recognition of the services he rendered during the past year as Lord Chancellor, a title which, consequently, gives him a precedence in the House which otherwise he would not have enjoyed, is one which in the past has not often been conferred upon any of the Law Lords. It will be remembered, however, that it was conferred upon the now veteran LORD DUNEDIN, and the late LORD SUMNER. In their case it used to be whispered that their advance in the peerage was given not merely to mark their distinction in the judicial work of the House but to give them precedence over a certain noble lord, now gone to his rest, who was considerably senior to each of them in the peerage, but who, on account of age, was scarcely regarded from the legal point of view as quite equal to the task of presiding over the deliberations of the House in the absence of the Lord Chancellor. The title "Viscount," which in our peerage ranks immediately below that of Earl, was originally borrowed from France, and was used to denote the royal sheriff whose position had affinities to that of the Norman Vice-Comes. As a title of honour in this country we read that it was first conferred by Henry VI upon LORD BEAUMONT created VISCOUNT BEAUMONT.

The Woolsack.

ONE of the curious features of the procedure of the House of Lords, as is pointed out by Mr. HOOD PHILLIPS in his recent work on the Principles of English Law and the Constitution, is that the Speaker of the House may be a commoner, and it is for this reason that the Woolsack is deemed to be outside the bounds of the House. In the recent past both Sir FREDERICK SMITH (afterwards LORD BIRKENHEAD) and Sir DOUGLAS HOGG (whom we now know as LORD HAILSHAM) sat on the Woolsack for a few days before being raised to the peerage. The precedents thus set, following many older ones, were followed once again recently, when, as the report of the proceedings stated, "Sir Thomas Inskip, Lord Chancellor, occupied the Woolsack." Since then, however, it will have been noted that SIR THOMAS has been raised to the peerage, so we know him no longer by his patronymic.

Michaelmas Law Sittings.

THE lists of the Michaelmas term, which begins on Tuesday, show, when compared with the lists for the corresponding term last year, increases in the number of appeals, both to the Court of Appeal and to the Divisional Court, and in the number of matters to be heard in the Chancery Division. These increases which total seventy-four are, however, more than balanced numerically by a decrease of 177, which is to be recorded in the number of actions awaiting trial in the King's Bench Division. The figures are, briefly, as follows. There are 218 appeals to the Court of Appeal, of which four are interlocutory. Last year the figure was 208. Of the final appeals nineteen are from the Chancery Division, 130 from the King's Bench Division, six from the Probate, Divorce and Admiralty Division, fifty-eight from the county courts, and there is one appeal from the County Palatine Court of Lancaster. The first three figures include respectively four appeals in bankruptcy, eight from the Revenue Paper and one Admiralty Matter. The total for the Chancery Division is 241, compared with 190 for last year. FARWELL, J., has one Retained Matter and one Assigned Matter. The Non-Witness List, comprising sixty actions, will be dealt with by BENNETT and CROSSMAN, JJ., and cases in the Witness List, which number 162, will be dealt with by SIMONDS and MORTON, JJ. The lists of the four judges last named contain in the aggregate seventeen Retained or Assigned Matters. There are eighty-two companies matters, which will come before BENNETT, J., and fourteen appeals and motions in bankruptcy. The total for the Divisional Court for the coming term is 108. Last year the corresponding figure was ninety-five. There are fifty-three appeals in the Divisional Court List, twenty-four in the Revenue Paper, thirteen in the Special Paper, three appeals and issues under the Unemployment Insurance Acts, 1935 to 1938, nine appeals under the Housing Acts, 1925 to 1936, and three each under the Public Works Facilities Act, 1930, and the National Health Insurance Act, 1936. The total number of actions for the King's Bench Division is 1,263, compared with 1,440 for last year. There are 498 Long Non-Jury actions awaiting trial, 707 Short Non-Jury actions, forty-one cases in the Commercial List, and seventeen Short Causes. Actions set down for trial in the jury lists have been transferred to the non-jury lists. Readers will remember that under s. 8 (1) of the Administration of Justice (Emergency Provisions) Act, 1939, no question arising in any civil proceedings in the High Court or in any inferior court of civil jurisdiction is to be tried with a jury, and no writ of inquiry for the assessment of damages or other claim by a jury is to issue, unless the court or a judge is of opinion that the

question ought to be tried with a jury or, as the case may be, the assessment ought to be made by a jury and makes an order to that effect.

The Ministry of Health Report, 1938-39.

THE report of the Ministry of Health for the year ended 31st March, 1939 (H.M. Stationery Office, Cmd. 6089, price 5s. net), makes reference to a number of health records established during the year. The standardised death fell to 8·5, the lowest figure on record, infant mortality fell to a new low record of fifty-three per 1,000, and maternal mortality was 2·97 per 1,000 births, the past year being the first period during which a figure of less than three per 1,000 has been achieved. Moreover, there were 2,353 fewer deaths from tuberculosis than in 1937, the biggest fall in one year since 1934. Mention is made of the Cancer Act, 1939, which imposes upon county and county borough councils the duty of securing adequate facilities in their districts for diagnosis and treatment. The number of deaths continued to increase; but it is stated that investigations have shown that a large proportion of sufferers from this disease can be cured or given a substantial measure of relief by means of radiotherapy, surgery, or a combination of both, if medical advice is obtained at a sufficiently early stage. But the gravity of the problem has not diminished, and the death rate from cancer has been progressively rising since the beginning of the present century. New records were established in housing. During the year under review 101,744 houses were completed by local authorities, and 230,616 were built by private enterprise, State assistance being provided in the case of 4,207 of these latter. Government subsidies for housing amounted to £15,380,000. The average number of persons in receipt of institutional and domiciliary poor relief were respectively 148,972 and 900,746 —the total of 1,049,718 representing 255 per 10,000 of the population. The total cost of out relief was £17,973,000. The number of persons insured under the National Health Insurance Acts in England rose by 2·1 per cent. to 17,119,000, and in addition 717,000 persons between the ages of fourteen and sixteen were at the end of the year entitled to medical benefit under the National Health Insurance (Juvenile Contributors and Young Persons) Act, 1937, which came into operation on 4th April, 1938. Loans sanctioned by the Minister of Health in 1938–39 for urban and rural schemes amounted to £4,218,000—a decrease of £604,000 compared with the figure for the previous year. The Ministry was responsible to Parliament for a total expenditure of £148,500,000. The total income of local authorities from rates and Government grants for the last year (1936–37) for which the full figures are available was £308,400,000. Mention is made of the two divisions of the department established in the year under review for Civil Defence service, one to make arrangements for the treatment of air-raid casualties and the other to organise the evacuation of civilians. In presenting the report the Minister stated: "There is no one who does not deplore the necessity for these developments, but we have to face the fact that they are likely to take their place for the immediate future as permanent additions to the list of public social services."

Goods Vehicles: Reports of Licensing Authorities.

THE fourth annual reports of the licensing authorities under the Road and Rail Traffic Act, 1933, which were issued a few weeks ago (H.M. Stationery Office, price 4s. 6d. net), draw attention to the continued and widespread disregard of the statutory conditions attached to licences, offences in regard to hours of work and rest with the falsification of drivers' records being, it would seem, particularly prevalent. Thus Mr. GLEESON E. ROBINSON, the licensing authority for the Metropolitan area, states that a great amount of work is being done in enforcement of the law relating to goods vehicles, and that it has been necessary to increase the number of cases in which a warning cannot be regarded as sufficient and the offenders should be prosecuted or have their licences suspended or revoked. There is, he says, no doubt that offences in regard to hours of driving and excessive speed are very frequent. Drivers' records are of great assistance in reducing these, but employers still show great carelessness in checking records, and it is clear that there are many false and inaccurate records. Mr. JOHN MAXWELL, the authority for the northern area, emphasises, with reference to the marked increase in the number of reports and complaints of the working of excessive hours, that it is recognised that drivers suffering from excessive fatigue are a source of danger to the public and other road users, and states that he is satisfied that many of the offences have been deliberately committed, and that in some cases very skilful attempts have been made to evade the law. It appears that the Transport Advisory Council has been asked to consider and report on the disregard of the statutory conditions and to recommend what steps should be taken to secure more general observance of the law. The Traffic Advisory Council has also been asked to examine the position with regard to the increase in the number of trailers drawn by private cars and to consider whether it is desirable to amend the law regarding these trailers. The authority for the northern area reports that the position with regard to brakes still leaves much to be desired. The general impression that hand brakes are for parking purposes only and need not, therefore, be efficient, is adverted to, with the observation that the transmission brake of certain vehicles is unsatisfactory in design and inefficient in operation. The total number of all operators on 30th June, 1938, was 228,186. The corresponding number a year earlier was 237,601, but it is pointed out that both figures contain a small unascertained element of duplication in respect of operators holding licences in two or more traffic areas.

Rules and Orders: Juvenile Courts.

THE text of the Juvenile Courts (Constitution) Provisional Rules, 1939, which have been made by the Lord Chancellor under powers conferred upon him by para. (i) of the Second Schedule to the Children and Young Persons Act, 1933, was given at 83 SOL. J. 735. It will be recalled that under the system introduced by the Act of 1933 a panel of justices specially qualified for dealing with juvenile cases was formed in every petty sessional division outside the metropolitan police area (juvenile courts in that area date from 1920), and it was provided that no justice should be qualified to sit as a member of a juvenile court unless he was a member of the panel. Provision was also made for the revision of the panel every three years. The effect of the new rules, which came into operation as provisional rules on the 12th of the present month, is to prolong the life of the existing juvenile court panels until 31st October, 1940, and to limit until the same date the life of any new panel created before the date on which the rules came into force for a period beginning 1st November, 1939. In a letter which has been sent from the Home Office to the clerks to the justices it is stated that the Lord Chancellor and the Secretary of State came to the conclusion that, in the present circumstances, it would economise the time of justices and clerks to justices if they were relieved of the necessity of assembling before 31st October next in order to appoint new panels, and of forwarding to the Home Office the names and addresses of justices on the new panels. Where a new panel was appointed during the present year before 12th September, the names, addresses and ages of the justices so appointed should be forwarded to the Home Secretary in the usual way. Clerks to the justices are reminded by the same letter that the Juvenile Courts (Constitution) Rules, 1934, enable the justices of any petty sessional division to add further members to the juvenile court panel at any time. Any justice so added serves for the remainder of the life of the panel. Particulars of such appointments should be reported to the Home Office as usual.

War and Contracts.

I.—SOME PRINCIPLES.

WHAT is the effect of war upon subsisting contracts? Do the parties remain bound to their obligations, however difficult or even impossible to perform? Or, on the other hand, in what circumstances is a contract dissolved by war? And with what results? Do different principles apply to different contracts or does one doctrine underlie them all? Is it to the point whether the contract has been in part performed or is wholly executory? And finally, what of contracts made before the war with persons who have since become enemies? Who, for this purpose, is an enemy? And what is the far-reaching scope of the prohibition of trading with the enemy?

These are some of the questions upon which lawyers, in town or in the country, will soon be called upon to advise; it is hoped in a series of articles to deal with the practical aspects in outline. Certain general principles emerge from the multitude of cases decided in the last war, which—it would appear reasonable to assume—will probably be applied by the courts to the novel circumstances of the present war. One thing is certain: to-day, as in the past, the great judges will endeavour, within the limits of the common law, to harmonise justice with contract. Lord Sumner once described the rule of "frustration of the adventure" as "a device, by which the rules as to absolute contracts are reconciled with a special exception which justice demands": *Hirji Mulji Case* [1926] A.C. 497, 510. Lord Wright—one of the makers of our modern law—takes the same view: "There is a contract: something has happened under it which the parties have not provided for because they did not anticipate it: it is unjust that the parties should continue bound": "Some Developments of Commercial Law in the Present Century," 1935.

No clearer or more terse exposition of the principle of frustration can be found than in this address of Lord Wright. The court does not dissolve a contract; it proceeds on the fiction of the "presumed common intention" of the parties. In fact, the parties had no intention about the matter, because they did not think about it, but—"under certain circumstances, it is necessary in the interests of justice to imply a term which was not in the contemplation of the parties": Law Revision Committee on *The Rule in Chandler* v. *Webster* [1904] 1 K.B. 493; 1939, Cmd. 6009, p. 6. The idea originated in cases where there is a contract for the purchase of goods which perish without the fault of either party; an implied term is read into the contract that in those circumstances dissolution will take place: see *Nickoll & Knight* v. *Ashton, Edridge & Co.* [1901] 2 K.B. 126. Again, if there is a change of law which prevents the subject-matter of the contract being disposed of as the contract requires, dissolution results automatically: *Baily* v. *De Crespigny* (1869), L.R. 4 Q.B. 180. In the "Coronation Seat Cases," however, the window hired was available upon the contractual date, but there was a change of circumstances at the basis of the contract, namely, the cancellation of the coronation procession: *Krell* v. *Henry* (1903), 2 K.B. 740. Lord Wright hinted that the "Coronation Seat Cases" were not correctly decided, for "each party was able to give or receive all that the contract specified, and it would seem that in future any court not bound by authority would so hold": *op. cit.*, p. 5; see *Maritime National Fish, Ltd.* v. *Ocean Trawlers, Ltd.* [1935] A.C. 524, 528, 529.

But the rule that where there has been a "frustration of the adventure," the contract is automatically at an end and both parties are released, appears most clearly in the "Requisition Cases." A ship is hired by charter-party; before or during the charter period—it matters not—it is requisitioned by the Government. For the purposes of the contract, the ship, for an indefinite period, is outside the scope of private contract; it is the same as if it were lost or destroyed. True, that when the requisition has ceased or the war is over, the contract might still, if the ship is available, be physically performed. But conditions of labour and of payment will so radically have changed that the contract, in its original form and intention, can no longer be performed.

Thus, in *Jackson* v. *Union Marine Insurance Co.* (1873), L.R. 8 C.P. 572; (1874), L.R. 10 C.P. 125 (this was not a war-time case of requisition), the time necessary to repair the damaged ship was so long as "to put an end in a commercial sense to the commercial speculation" (*per* Bramwell, B., p. 141). In *Horlock* v. *Beal* [1916] 1 A.C. 486, a seaman's wife sued on an allotment note of her husband for his wages; the ship was detained at Hamburg through the blockade and there was no prospect of early release. Further performance of the contract of service was therefore impossible; the contract was discharged and no wages were payable. On the other hand, in *Tamplin's Case* [1916] 2 A.C. 397, the owners had chartered a ship for five years to carry oil; two years after the commencement, the ship was requisitioned by the Admiralty for the transport of troops. The House held (by a majority) upon the facts of that case, that the interruption was not enough to destroy the basis of the contract. No definite adventure was frustrated. The function of the owners was merely to receive the monthly hire which the charterers were willing to pay. But in *Metropolitan Water Board* v. *Dick, Kerr* [1918] A.C. 119, a contract had been made for the construction of reservoirs over a period of six years. The Ministry of Munitions gave notice that the work must be stopped and the plant dispersed. The Water Board claimed that the contract was still in existence. It was held that the interruption discharged the contract. It was so long "as to destroy the identity of the work or service, when resumed, with the work or service when interrupted." This was the test formulated by Lord Dunedin (at p. 128). Of that case Lord Wright observed: "Neither party can give or receive *modo et forma* what the contract as between the parties requires" (*supra*, p. 5).

How far can this doctrine be applied in practice to ordinary commercial contracts for the sale of goods? In principle, the doctrine is of general application; in practice, its application is limited. "The doctrine of the frustration of the adventure applies to building contracts, charter-parties (including time charters), contracts for the sale of goods by sea, contracts for the sale of goods and chattels, but does not apply to the case of a contract which creates an estate by demise": (Halsbury, "Laws of England," 2nd ed., vol. 7, *Contract*, p. 215). On the other hand, Lord Sumner, in the *Bank Line Case* [1919] A.C. 435 459,—adopting Lord Dunedin's test (*supra*)—declared that the doctrine is one "which ought not to be extended."

The limitations of the doctrine in the case of ordinary commercial contracts are most clearly set forth in the comprehensive judgment of McCardie, J., in *Blackburn Bobbin Co., Ltd.* v. *Allen & Sons, Ltd.* [1918] 1 K.B. 540; affirmed, 2 K.B. 467, which it is hoped to examine in the next article in this series.

NOTE.—Since the above was written, the *Report of the Committee on Liability for War Damage to the Subject-Matter of Contracts*, 1939, Cmd. 6100 (Price 4d.), has come to hand. Its findings and conclusions will be discussed in due course.

(*To be continued.*)

The Minister of Health, Mr. Walter Elliot, has issued his quarterly statement showing the number of persons in receipt of poor relief in England and Wales for the quarter ended June, 1939. With the exception of increases following the Easter and Whitsun holidays there was a continuous decrease throughout the quarter in the number of persons in receipt of relief. At the end of June, 1939, the total number was 1,031,421, a decrease of 42,554 when compared with the corresponding total at the end of March, 1939, and a decrease of 8,931 when compared with the end of June, 1938.

Company Law and Practice.

The Emergency Legislation—I.

I AM now able to begin a brief review of those provisions of the recent emergency legislation which are of interest to company lawyers. I begin with one of the shortest of the Acts—the Courts (Emergency Powers) Act, 1939, which consists of seven sections of which only the first enacts any substantive law. The purpose of the Act may be summarised in the words which appear in the margin at s. 1—"restriction on execution and other remedies"—and the method adopted to achieve this purpose is to make it necessary to obtain the leave of an appropriate court before proceeding to execution and other similar remedies. Section 1 specifically refers to the Companies Act, 1929, and places a restriction on the exercise of the powers conferred by a section of that Act. Section 1 (2) (*a*) (v) reads as follows:—

> "Subject to the provisions of this section a person shall not be entitled, except with the leave of the appropriate court—
>
> "to proceed to exercise any remedy which is available to him by way of . . .
>
> * * * *
>
> "the serving of a demand under paragraph (1) of section one hundred and sixty-nine of the Companies Act 1929...."

Section 169 of the Companies Act, 1929, is the second of the sections dealing with winding-up by the court. Section 168 provides when a company may be wound up by the court, one occasion being when the company is unable to pay its debts. Section 169 explains this provision and provides that in certain circumstances a company shall be deemed to be unable to pay its debts. One of these circumstances is when a creditor for a sum exceeding £50 has served on the company a demand requiring payment of the debt and the company has failed for three weeks after the demand to satisfy the debt. Now, under the new Act, it is not open to a creditor to serve such a demand without first getting the leave of the court and it will, therefore, be necessary on a winding-up petition to show that leave was sought and obtained from the appropriate court and the demand was only subsequently served. There are exceptions to this to which I will return in a moment, but first I want to refer to subss. (4) and (5) of s. 1 of the new Act which gives some indication of the attitude of the court towards an application for leave to serve a demand under s. 169 of the Companies Act or to do any of the other things for which the leave of the court is now necessary.

By virtue of subs. (4), if the court "is of opinion that the person liable to...pay the...debt...in question is unable to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, the court may refuse leave for the exercise of" the particular right or remedy which it is sought to enforce, or it may give leave "subject to such restrictions and conditions as the court thinks proper." The subsection is widely framed and it is clearly left to the courts to work out the principles or rules on which they will act. It will only be possible to gauge the practical effect of the restrictions imposed by the Act in the light of experience. It is, perhaps, worth remarking that the court is given a complete discretion. It first has to form an opinion and then, having done so, it *may* refuse leave, grant leave or grant only conditional leave. It is never bound to refuse or to grant leave. The phrase "circumstances directly or indirectly attributable to any war," etc., leaves room for a good deal of argument, but it is to be expected that if the court considers that such circumstances, though existent, are only a remote cause of the failure to meet an obligation, it will turn a favourable ear to the application.

Subsection (5) deals with bankruptcy and winding-up petitions. Where such a petition is presented on the grounds that the debtor or company is unable to pay its debts, it will be open to the debtor or company to allege that inability to do so is "directly or indirectly attributable to any war in which His Majesty is engaged." If the debtor or company succeeds in establishing this to the satisfaction of the court, "the Court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court think fit." A prospective petitioner who knows that the debtor or company may be in a position to avail himself or itself of this plea is placed in a difficult position. He may not want to run the risk of allowing his debt to remain outstanding without taking some sort of action, but at the same time he will not want to initiate proceedings which may remain stagnant, as it were, for an indefinite period. If the debtor or company asks for a stay under this subsection, the evidence which may be adduced in support will obviously vary widely in each case. The petitioner will not, it is thought, be entitled to adduce evidence to show positively that the inability to pay the debt is due to some circumstance not in any way connected with the war. He will be concerned to argue that the circumstances relied on by the debtor or company are either not attributable to the war or, alternatively, are not circumstances giving rise to the inability to pay.

I have said that the restrictions on proceedings imposed by s. 1 of the Act apply subject to certain exceptions. I now come to the exceptions which are dealt with in a proviso, as follows—

> "Provided that this subsection [i.e., sub-section (2) which refers *inter alia* to the serving of a demand under s. 169 of the Companies Act] shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt, or the performance of an obligation, being a debt or obligation arising by virtue of a contract made after the commencement of this Act. . . ."

Hence, if a company has entered into a contract after the outbreak of war and a debt payable by the company arises under that contract, the creditor is free to pursue his remedy under s. 169 of the Companies Act. The Act is not intended to do more than give assistance to debtors whose debts have arisen under peace time obligations and who have been embarrassed by the outbreak of war. After war has actually broken out, companies (and, for that matter, individuals) must look after themselves. They are alive to the new conditions and they must adapt themselves accordingly. If they undertake in war time obligations which they cannot fulfil, on account of the war, then so much the worse for them. The courts will not grant them any relief.

Before leaving this Act I must draw attention to s. 3 (*b*). This provides that a person who is entitled to the benefit of a judgment or order and who presents a winding-up petition based on the non-payment of money due under that judgment or order, shall be deemed to be proceeding to the enforcement of that judgment or order. This, in conjunction with s. 1 (1) of the Act, means that, if the judgment or order is made on a contract which dates from before the commencement of the Act, the leave of the court will be necessary for the presentation of a winding-up petition. No leave will, however, be necessary if the whole of the sum recoverable under the judgment or order is for costs.

The Lord Chancellor has made rules under powers conferred on him by the Act. These rules are the Courts (Emergency Powers) Rules, 1939, and the County Court (Emergency Powers) Rules, 1939, which formed the subject of a special article in the issue of 16th September. I need not, therefore, refer to them in any detail, especially as most of their provisions do not concern company lawyers. They must be carefully studied as and when occasion arises, together with the various forms which are scheduled to the rules. I will just recall the main outline of those provisions which are likely to affect company lawyers. Either the High Court or the county court may, according to the circumstances of the case, be the "appropriate court" in which to proceed. If leave is

required for the presentation of a winding-up petition in the circumstances outlined in the last paragraph, the appropriate court for an application for leave will be the court by which the judgment or order forming the basis of the petition was given or made. Where leave is required for the serving of a demand under s. 169 (1) of the Companies Act, 1929, the appropriate court is the High Court. In other cases both courts have jurisdiction, and other provisions, with which we are not directly concerned in this article, apply. The procedure to be followed is laid down in Pt. II of the rules, but I need not go over this ground again, as it was covered by the article referred to.

The Act provides that it shall come into operation on such date as His Majesty may by Order in Council appoint, and the rules provide that they shall come into operation on the commencement of the Act. Needless to say, both Act and rules are now in operation. At a Council, held on 2nd September—the day before the outbreak of war—His Majesty appointed that day for the commencement of the Act.

A Conveyancer's Diary.

Possession of Mortgaged Land (Emergency Provisions) Act.

THE Possession of Mortgaged Land (Emergency Provisions) Act, 1939, appears to be designed to supply an omission in the Courts (Emergency Powers) Act. The latter provides that various things are not to be done without the leave of the appropriate court, which leave may be refused if the court is satisfied that the person liable is unable to fulfil his liability at once "by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged": s. 1 (4). The things for which the leave of the court is made necessary are specified in the first three subsections. They are, briefly, (1) proceeding to execution of any judgment or order of any court, whenever given, "for the payment or recovery of a sum of money," with certain exceptions, namely, damages for tort, money payable under a contract made after 1st September, 1939, judgments for costs, bastardy orders, orders in penal proceedings; (2) nor may any person, without such leave, "proceed to exercise any *remedy* which is available to him by way of" distress, taking possession of any property, appointing a receiver of any property, re-entry on land, realisation of any security, or forfeiture of any deposit, nor may anyone without leave take any proceedings for foreclosure or take any step in any such proceedings instituted before 1st September, 1939. But nothing in subs. (2) affects obligations entered into after 1st September, 1939, or "any power of sale of a mortgagee of land . . . who is in possession of the mortgaged property at the commencement of this Act" or has then appointed a receiver, or any mortgagee's power of sale of property other than land or an interest in land where the power of sale had arisen and notice of its intended exercise had been given before the Act, nor any proceedings for the appointment of a receiver by the court. By subs. (3), no one may, without leave, enforce an order for possession of land for non-payment of rent.

In their application to mortgages made before the war started these provisions seem on the face of them to cover most things which a mortgagee can do. Without leave, he cannot enforce any judgment for the recovery of principal or interest (subs. (1)); he cannot start foreclosure proceedings (subs. (2) (*b*)); he cannot exercise the power of sale unless he was in possession on 1st September, 1939 (subs. (2) (*a*) (iv)) and proviso (*a*). And he cannot, without leave, exercise any remedy by way of the appointment of a receiver: subs. (2) (*a*) (ii). But there is nothing to stop his taking possession. A mortgagee of land is normally entitled to possession by virtue of having an immediate term of years absolute; he is entitled to possession, not by way of remedy for some default of the mortgagor, but as a right attaching to his position as lessee. Of course, in ordinary circumstances no mortgagee does take possession unless there has been a default, as there is no reason for him to do so, and the attitude of equity towards the accounts of a mortgagee in possession is, to say the least of it, discouraging. But nothing in the Courts (Emergency Powers) Act stops a mortgagee, debarred by the Act from his ordinary remedies, from taking advantage of this right. Such a proceeding is not covered by s. 1 (2), which only debars persons from proceeding "to exercise any *remedy*" by way of "(ii) the taking of possession of any property." To exercise a remedy is to avail oneself of a means of redress for a default; for a mortgagee to take possession is not, technically, to get redress, but to exercise a right independent of any default of the mortgagor.

Accordingly, it was necessary for the Possession of Mortgaged Land (Emergency Provisions) Act to fill in this loophole. It is achieved as follows. By s. 1 (1) it is provided that: "where any land is the subject of a mortgage made before the third day of September, 1939, the mortgagee shall not be entitled to obtain possession of the land, unless default has been made in payment of the *mortgage money* or any part thereof or of any interest thereon, or there has been a breach on the part of the mortgagor, or of some person concurring in the making of the mortgage, of any obligation arising under or by virtue of the mortgage, other than the obligation to pay the mortgage money or interest thereon." "Default" and "breach . . . of . . . obligation" in this subsection bear their ordinary meanings so far as interest and covenants (other than to pay the mortgage money or interest) are concerned. But it is provided that so far as the *mortgage money*, i.e., the principal, is concerned, default is not to be deemed to have taken place unless the money has been demanded in writing and three months have elapsed without payment: s. 1 (2). But this provision does not apply to mortgage money payable by instalments, e.g., money due under a building society mortgage, and in that case default in payment on the due date is sufficient to save the mortgagee's right to possession: *ibid.*, proviso.

The section does not apply, of course, where possession was obtained before the passing of the Act, i.e., 21st September, 1939, but it does apply to proceedings for possession whenever instituted: s. 1 (3). If an order for possession was made before the passing of the Act, there is to be deemed to have been a default within the meaning of the Act, but any such order may be reviewed by the court having regard to the terms of s. 1.

The gap in the Courts (Emergency Powers) Act, 1939, is filled up by s. 2, which amends s. 1 (3) of the principal Act, so that it reads as follows: "Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Act) for the recovery of possession of land in default of payment of rent or for the recovery of possession of land by a mortgagee thereof by reason of a default in the payment of money."

The amended section makes leave necessary for enforcing a judgment for possession by a mortgagee if it is grounded on a default in payment of money, i.e., principal or interest, but not if it is grounded on a breach, by the mortgagor or anyone else, of any covenant of any other sort.

To sum up: the present position of a mortgagor under a mortgage made before the war is as follows:—

1. He may not execute an order for payment of money, whether principal, interest or damages for breach of covenant, without the leave of the court: C. (E.P.) A., s. 1 (1).

2. He may not, without such leave, appoint a receiver: C. (E.P.) A., s. 1 (2) (*a*) (ii).

3. He may not, without such leave, exercise his power of sale, s. 1 (2) (*a*) (iv), unless *either* (if the property is land or an interest in land) he was in possession at the beginning of the war, or had then already appointed a receiver: *ibid.*, proviso (*a*), *or* (in the case of other sorts of property) the power of sale had arisen before the war and notice had been given of its intended exercise: *ibid.*, proviso (*b*).

4. He may, however, apply to the court, without leave, for the appointment of a receiver: *ibid.*, proviso (*d*).

5. He has no right to possession unless either (*a*) there has been actual default in payment of the interest, or an instalment of capital payable by instalments, or (*b*) there has been a breach of covenant, other than a covenant to pay money, or (*c*) the principal has been demanded in writing and has remained unpaid for three months: P. of M.L. (E.P.) Act, s. 1.

6. If he gets a judgment for possession on the ground of non-payment of money, whether principal or interest, he cannot execute it without leave, but he needs no leave to execute such a judgment not based on non-payment of money: P. of M.L. (E.P.) Act, s. 2.

7. He cannot, without leave, start proceedings for foreclosure, or take any step in pending proceedings for foreclosure: C. (E.P.) Act, s. 1 (2) (*b*).

Landlord and Tenant Notebook.

Disclaimer and Retention of Leases under the Landlord and Tenant (War Damage) Act, 1939 (*continued*).

THE operation of a notice of disclaimer may be modified by the court on the application of any person (*a*) having an interest in or derived out of the term created by the lease disclaimed; or (*b*) having an interest in the reversion immediately expectant upon the determination of that lease. The application may be made at any time within the period allowed under the Act (see s. 5). for serving a notice to avoid disclaimer. It is expressly provided, however, that the landlord's right to serve a notice to avoid disclaimer is not prejudiced by an application of this nature, or even an order of the court thereon, unless the court directs otherwise.

The matters in respect of which the court may modify the operation of a notice of disclaimer are laid down in s. 9. The court may do so (*a*) by varying the date when s. 8 (2) takes effect (i.e., when the notice of disclaimer was served) or by varying the date as from which any lease or sub-lease is deemed to have been surrendered or any interest therein is deemed to have been extinguished; (*b*) by excepting from the operation of s. 8 (dealing with the effect of a notice of disclaimer) on such terms as the court thinks just, any sub-lease and any interest therein which would otherwise be deemed to have been surrendered or extinguished; (*c*) by vesting on such terms as the court thinks just the lease disclaimed, or any sub-lease which would otherwise be deemed to have been surrendered, in any person having an interest in the lease or sub-lease other than the tenant thereunder; (*d*) by imposing such terms and making such orders as to the removal of fixtures and otherwise as the court thinks just. The terms imposed by the court under (*b*) or (*c*) may include such alterations as the court thinks just of the terms of the lease or the sub-lease in question.

The notice of retention, as stated last week, is a notice served by the tenant on the landlord stating that the tenant elects to retain the lease on the terms specified in the Act (s. 4 (2) (*b*)). These terms are set out in s. 10. They apply also, of course, where under the Act a notice of retention is deemed to have been served. Equally, obviously, they do not apply where the notice of retention is of no effect under the Act, or where the notice to elect by virtue of which the notice of retention is deemed to have been served is of no effect under the Act.

The terms are all the terms of the lease, subject to these modifications: (*a*) notwithstanding Pt. I of the Act, relating to the modification of obligations to repair in case of war damage, an implied covenant by the tenant with the landlord that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the date when the notice was served or is deemed to have been served. (In this case, if any person, before the date when the notice of retention was served or is deemed to have been served, has guaranteed the performance of the covenants in the lease, the guarantee is not deemed to extend to this implied covenant); (*b*) no rent is payable by the tenant under the lease in respect of the period beginning with the date when the notice was served or is deemed to have been served, and ending with the date on which the land is rendered fit. This applies subject to the following powers of the court under (*c*) and (*d*): (*c*) the landlord may at any time before the land has been rendered fit apply to the court, and if he shows satisfactorily that part of the land is capable of beneficial occupation, the court may direct that the tenant shall pay such rent, at such times and in respect of such periods as the court may fix. The rent so fixed must not exceed such proportion of—(i) the annual value at the time of the application of so much of the land as is at that time capable of beneficial occupation; or (ii) the full annual rent reserved by the lease, whichever is the less, as the period in respect of which the rent is payable bears to a year; (*d*) the landlord may at any time apply to the court, and if he satisfies the court that there has been unreasonable delay on the part of the tenant in rendering the land fit, the court may fix the rent, the times of payment and the period for which it is payable, but it must not exceed the rent payable under the lease.

"Rent" is defined to include any periodical sum payable by the tenant in connection with the occupation of the land comprised in the lease, whether for services, lighting, heating, board, use of furniture or otherwise. "Lease" is deemed to have the same meaning as it bears in the Landlord and Tenant Act, 1927, i.e., "a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease, tenancy or assignment": Landlord and Tenant Act, 1927, s. 25 (1). The comprehensive character of these definitions should be carefully noted. "Annual value" is defined to mean the rent at which the land might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenants' rates and taxes and the landlord undertook to bear the cost of repairs and insurance and the other expenses necessary to command that rent. This is almost identical with the definition of "gross value" in s. 68 of the Rating and Valuation Act, 1925, with the exception that the proviso that no account is to be taken of the value of services by the landlord is omitted.

It will be remembered that under s. 4 (5) the landlord may, after service upon him of a notice of disclaimer, serve upon the tenant a notice to avoid disclaimer requiring the tenant to retain the lease on the terms specified in the Act. Those terms are set out in s. 11, which enacts that the effect of a notice to avoid disclaimer is to render the notice of disclaimer of no effect. Its further result is to make the lease have effect subject to these modifications: (*a*) notwithstanding Pt. I of the Act, a covenant by the landlord shall be implied in the lease that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the service of the notice to avoid disclaimer. (Any guarantee of the covenants of the lease given before the service of the notice is deemed not to extend to this implied covenant.) (*b*) No rent will be payable for the period between the date of service of the notice of disclaimer and the date on which the land is rendered fit, but (*c*) the court has the same powers with regard to ordering payment of rent as it has when there has been an effective notice of retention. It should be added that, of course, the lease will not be modified in this manner if the notice of disclaimer is of no effect by reason of some

other provision of Pt. II of the Act (e.g., on an application under s. 6 on the ground that the land was not unfit by reason of war damage at the time when the notice was served).

There is always the possibility that the same premises might be damaged twice by warlike action, and this is provided for in s. 12. It applies where land comprised in a lease has been rendered unfit by war damage, and further war damage occurs to the land before it has been rendered fit and after notice of retention has been or is deemed to have been served or notice to avoid disclaimer has been served, in respect of the lease. In such cases, the tenant or the landlord, as the case may be, may apply to the court for leave to withdraw the notice.

Before granting such leave the court must be satisfied that the liability of the tenant or the landlord, as the case may be, in respect of repairs under the lease as modified in pursuance of the notice has been materially increased by the further war damage.

The effect of the withdrawal of a notice is that as from the date of withdrawal any notice to elect or notice of disclaimer served before that date is of no effect; and the lease has effect as if the notice had never been served or been deemed to have been served. This, however, does not mean that any liability for rent is imposed on the tenant as regards any period before the date of the withdrawal of the notice. The court may order otherwise having regard to all the circumstances, but in the absence of any such order, previous exemptions from rent under ss. 10 and 11 will still remain valid.

Next week we hope to deal with the provisions of the Act relating to ground leases and leases comprising buildings which are used or adapted for use as two or more separate tenements (multiple leases).

Our County Court Letter.

LIABILITY FOR HIRED CARS.

THE above subject has been considered in three recent cases. In *Augustine Garage, Ltd.* v. *Fennell*, at Northampton County Court, the claim was for £9 4s. 4d., as damages for negligence. The plaintiffs' case was that one of their cars had been hired by the defendant for a week-end for £2 5s., inclusive of third-party insurance. The car had been involved in an accident, and the repairs had cost the amount claimed. It was submitted for the defence that the mere fact of damage was no evidence of negligence, and therefore there was no case to answer. The submission was overruled, and the evidence for the defendant was that he had been driving the car down a hill, on a wet and leaf-strewn road. Although the speed was slow, the car skidded, and the damage was due to inevitable accident, and not to the defendant's negligence. The insurance effected by the plaintiffs, as owners, should, therefore, have covered the damage. His Honour Deputy Judge Colin Coley held that the evidence established negligence by the defendant. Judgment was given for the plaintiffs, with costs.

In *West's Garage* v. *Galpin*, at Cambridge County Court, the claim was for £7 10s. 4d. as damages for the loss of use of a car. The plaintiffs' case was that the defendant had signed a form of hiring agreement, under which he agreed, *inter alia*, to return the car in the same condition as when it was hired. Owing to the omission of the defendant to lock the door, on parking the car in Knightsbridge, S.W., the car had been stolen. The defendant's case was that he was only away from the car for ten minutes, and he at once reported the loss to the police at Scotland Yard. The circumstances were accordingly beyond his control, and the loss did not arise from any of the causes for which he had undertaken liability. The utmost for which he was responsible was the expense of fetching the car, which had been recovered by the police. His Honour Judge Lawson Campbell gave judgment for the plaintiffs, with costs.

In *West's Garage* v. *Brown*, at Cambridge County Court, the claim was for £62 as damages for negligence. The defendant had hired a new car, worth £142 10s., but had gone to sleep at the wheel and had collided with a telegraph pole. The cost of repairs represented the amount claimed. The defendant's case was that the car was old and the claim was therefore excessive. Judgment was given for the amount claimed, with costs.

WRIT OF *ELEGIT*.

IN *Worcester Garages, Ltd.* v. *Farley*, recently heard in the Worcester Sheriff's Court, the case for the execution creditors was that they had recovered judgment against the defendant for £46 17s. 9d. and £8 10s. costs. The defendant owned Cleeve Lodge, Oldfield, Ombersley, and the evidence of the rating officer was that the defendant had paid the rates on the house for the previous five years and she was always regarded as the owner of the property. The annual value was £18 gross and £11 rateable, the area being half an acre. In the last quinquennial valuation the defendant was described as owner and occupier of the house. The defendant did not appear and the Under-Sheriff, Mr. C. L. Whatley, summed up to the jury to the effect that they were not concerned with the debt, as the amount thereof had been established already. The questions for the jury were: What property the defendant had in Worcestershire, and what was its annual value. The jury found as facts that the defendant did own the property known as Cleeve (or Clive) Lodge, Ombersley, and that its net annual value was £35. A further question, as to whether (on the information available) the defendant had any other property in the county, was answered in the negative. It is to be noted that, upon the inquisition and return made, the judgment creditor has a tenancy by *elegit*. This entitles him to enter upon the lands of the debtor, or to sue for possession if excluded. The creditor can then recoup himself the amount of the debt and costs by receiving the rents and profits until the amount of the judgment is satisfied. The debtor is then entitled to resume possession of the land, or, if his title is disputed, he can apply by originating summons for an account to be taken in chambers. See R.S.C., Ord. 33, r. 2. A creditor who is tenant by *elegit* is therefore in a position analogous to that of a mortgagee in possession. If a sale is desired, an application to that effect must be made by originating summons in the Chancery Division.

Books Received.

Premiums for Life Assurances and Annuities, by J. H. GUNLAKE, and *The Treatment of Extra Risks*, by C. F. WOOD. 1939. Demy 8vo. pp. xi and 126 and 71. Published for the Institute of Actuaries Students' Society. London: Cambridge University Press. 9s. 6d. net.

The International Law Association. Report of the Fortieth Conference held at Amsterdam. Demy 8vo. pp. cxxxviii and (with Index) 316. London: The International Law Association.

Brickdale and Stewart Wallace's Land Registration Act, 1925. Fourth edition. 1939. By Sir JOHN STEWART STEWART-WALLACE, C.B., Chief Land Registrar of H.M. Land Registry for England and Wales. Royal 8vo. pp. xx and (with Index) 637. London: Stevens & Sons, Ltd. £1 10s. net.

Obituary.

MR. E. H. BUTCHER.

Mr. Ernest Henry Butcher, Barrister-at-law, died on Saturday, 16th September. He was called to the Bar by Gray's Inn in 1927, and will be remembered by many as the Editor of "Graya."

To-day and Yesterday.

LEGAL CALENDAR.

25 SEPTEMBER.—On the 25th September, 1752, James Stewart of the Glen was condemned to death at Inverary for killing a Campbell, and no one now doubts that he was innocent. The place of trial was the Campbell stronghold, the jury were Campbells, and the presiding judge was the Duke of Argyll, who addressed the prisoner on the impartiality of the hearing, the heinousness of his crime and the Jacobite risings not long past. Stewart, in a short speech of great dignity, declared that he forgave the jury and the witnesses who had sworn falsely against him, that he was innocent and not afraid to die, but that it grieved him that after ages should think him capable of such a barbarous murder. After ages have acquitted him and condemned his judges.

26 SEPTEMBER.—In 1744 the Lord Mayor and Aldermen of London were greatly perturbed at the way robbers escaped by running out of the City jurisdiction. Accordingly, on the 26th September, they sent Mr. Jones, the Deputy Marshal, to the Middlesex authorities to secure the co-operation of their peace officers, which was at once promised. As he was returning he happened to see a notorious rogue called Billinsly and tried to arrest him, but a dozen other ruffians, armed with cutlasses and pistols, came up, crying: "We know what you have been about but we defy all power." In the ensuing scuffle Mr. Jones and the constable escorting him were wounded but eventually they dispersed their assailants by the discharge of a "pocket blunderbuss amongst them loaded with duck shot."

27 SEPTEMBER.—When Laurence de Allerthorpe became a Baron of the Exchequer on the 27th September, 1375, the court had not yet wholly cut its connection with the medieval civil service, for he had begun his career as a clerk in the Exchequer, eventually rising to be auditor of the department. After performing judicial functions for twenty-five years, he became Treasurer in 1401. The framers of the new despotic planning Acts which are making the arbitrary decisions of officials final without recourse to the open justice of the courts might well consider how in earlier history common sense and common fairness turned departmental justice into public justice.

28 SEPTEMBER.—When Richard de Bury, Bishop of Durham, became Lord Chancellor on the 28th September, 1334, he made the most of his opportunities to satisfy his passion as a bibliophile. He writes: "It was reported not only that we had a longing desire for books and especially for old ones but that anybody could more easily obtain our favour by quartos than by money. Wherefore crazy quartos and tottering folios, precious however in our sight as well as in our affections flowed in most rapidly from the great and the small instead of New Year's gifts and remunerations and instead of presents and jewels."

29 SEPTEMBER.—One of the most remarkable peacetime disasters in the British Navy was the sinking of the ironclad "Vanguard," run down by the "Iron Duke," in a fog in 1875. Extraordinary courage and discipline saved the lives of the whole crew. The attitude of the Admiralty was the subject of considerable criticism, for while a court martial sitting at Devonport and concluding its proceedings on the 29th September tried and punished the officers of the "Vanguard," those in charge of the vessel which ran her down and seemed at least equally responsible escaped a like ordeal.

30 SEPTEMBER.—On the 30th September, 1776, Sir William Yorke, formerly Chief Justice of the Common Pleas in Ireland, died.

1 OCTOBER.—On the 1st October, 1753, "Wilson, Harris, Johnson for burglaries, and Hannah Wilson for stripping a child, were executed at Tyburn, the two former protesting their innocence to the last."

THE WEEK'S PERSONALITY.

Sir William Yorke, kinsman of the great Lord Chancellor Hardwicke, met a tragic end. Being grievously afflicted with the stone, he was in the habit of taking a certain quantity of laudanum drops. On the day of his death, during a particularly painful attack, he could not find his usual remedy and sent his servant to the apothecary for a fresh supply. The fellow, however, by mistake, asked simply for laudanum, and returning gave the bottle straight into his master's hand without any warning. Sir William, in his agony, drank up the whole contents and expired in less than an hour. In 1743 he had gone to Ireland as a Justice of the Common Pleas at the early age of forty-three. In the following year he had married the niece of Chief Justice Singleton, whom he later succeeded. In 1761 he resigned this office to become Chancellor of the Exchequer. He was only a mediocre lawyer, and what he seems to have enjoyed most in Dublin was the freedom with which he was admitted to the best society and the many learned and agreeable men he met there. He found the custom of "entertainments from house to house" rather a strain on his energies, but he was happy nevertheless.

ENDLESS FEUD.

It seems that there has been dissension in Chelmsford Gaol between two rival "I.R.A." generals, each claiming to be the rightful "O.C. Britain," and that the twelve other Irish prisoners granted a fierce allegiance to one or the other. None can tell how far into the future this historic feud may stretch, for Serjeant Sullivan recalls how in the County of Limerick he was engaged in a dozen assault cases and defended two homicides and three stabbing cases, all of which arose out of a dispute at the fair at Oola between a Ryan and a Hourigan towards the end of the eighteenth century as to whether a certain heifer was three or four years old. Their friends joined in the quarrel and some were killed, but the feud lived on through the generations so that in country fairs a man would suddenly be seen "wheeling and shouting for a Right Ryan" (i.e., walking in a circle flourishing his stick and proclaiming that Ryan was right). This would duly produce a similar demonstration on behalf of the Hourigan faction and then a fight would start which ended in the courts of law.

DOCTORS' COMMONS DISSOLVED.

The Long Vacation has seen the disappearance of a venerable relic of legal history, the last vestige of Doctors' Commons. The shattering explosion which was its spectacular end marked a fitting and final protest against the housebreakers' contempt of a court, the roots of which lay as deep in our traditions as the Middle Ages. Certainly Dickens could never have guessed that his "lazy old nook near St. Paul's Churchyard" would go off in such an uproar. You remember what Steerforth said of it: "It's a little out-of-the-way place where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of Acts of Parliament, which three-fourths of the world know nothing about and the other fourth supposes to have been dug up in a fossil state, in the days of the Edwards. It's a place that has an ancient monopoly in suits about people's wills and people's marriages and disputes about ships and boats."

Notes of Cases.

Judicial Committee of the Privy Council.

Hari Chand and Others *v.* Secretary of State.

Lord Macmillan, Sir George Rankin and Mr. M R. Jayakar.
30th June, 1939.

India—Acquisition of Buildings on Sites in Cantonment—Whether Land Acquisition Proceedings Applicable—Methods of Procedure and Valuation—Land Acquisition Act (I of 1894), s. 4.

Consolidated appeals against awards of compensation for the acquisition by the Government of India of certain buildings.

The Government proposed to resume some twelve properties granted out within the Cantonment of Peshawar, of the buildings on which the appellants, Hari Chand and others, were owners. Cantonments are regulated, so far as grants to individuals are concerned, by an Order of the Governor-General in Council of 1836, subsequently re-enacted from time to time in substantially identical terms. A condition of grant of any rights within the area of cantonments is the Government's power to resume control at any time on giving one month's notice. On resumption, the Government must pay the value of such buildings as have, with authorisation, been erected on the properties to be resumed. The Military Estate Officer, Peshawar Circle, in 1932 and 1933, issued to all the appellants notices of intention to resume control of the land granted to them on cantonment tenure, the notifications containing offers of compensation, all of which were refused. The normal course of arbitration was not thereupon pursued, the Government instead taking steps to expropriate the appellants under the Land Acquisition Act, 1894. A notification was accordingly served under s. 4 of that Act on each proprietor of buildings on the lands to be resumed, it being in each case set out as a matter of narrative that the Government claimed to be entitled to the land, and the Act being invoked for the acquisition of the buildings on it. An officer was appointed under s. 9 as collector, and he made awards under s. 11 after inquiry. The collector having made his awards of compensation, the appellants applied to the Land Acquisition Officer under s. 18, and he made references to the Court of the District Judge, Peshawar. The judge, having decided in favour of the Government, and appeals to the Court of the Judicial Commissioner, N.W. Frontier Province, having been dismissed, the present appeals were brought. (*Cur. adv. vult.*)

Lord Macmillan, giving the judgment of the board, said that it was argued that the notification under the Act of 1894 was bad because it was one only of an intention to acquire buildings. The whole of the proceedings under the Act were accordingly said to be fundamentally bad. In the Act, however, the expression "land" included "benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The Government, being owners of the site, it would have been clearly idle to propose to acquire it, and they naturally requisitioned under the Act what was not their own. This objection was in any case made too late because the parties followed the procedure established by the Act right through to compensation. The claimant for compensation must establish his title affirmatively (see *Secretary of State for India in Council* v. *Satish Chandra Sen*, L.R. 57 I.A. 339), and the appellants had failed to establish title to the sites. As to the method of valuing the buildings, it was complained that, in consequence of the service of the resumption notices, the value of all the buildings, some of them, no doubt, attractive residences, had been seriously depreciated. That criticism had no value since the method of valuation adopted in the present case was what was known as "the contractor's method." The subject to be valued being a building apart from the site, the principle of fixing value by ascertaining the cost of reproducing the building at the present time and then allowing for depreciation in consideration of age and the cost of repairs received apart from depreciation, was a quite well recognised method, and was not affected by the resumption notices. The appeals must be dismissed.

Counsel: *A. M. Dunne*, K.C., and *S. P. Khambatta*; *J. M. Tucker*, K.C.; *W. Wallach*, and *The Hon. Quintin Hogg*.

Solicitors: *T. L. Wilson & Co.*; *The Solicitor, India Office*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Hagan and Others *v.* Effuah Adum and Others; Same *v.* Arabak Tanuah.

Lord Thankerton, Lord Alness, and Lord Fairfield.
7th July, 1939.

West Africa—Procedure—Action Claiming Declaration of Value of Estate of Deceased Native—Jurisdiction of Native Tribunal—Native Administration Ordinance, 1928 (Cap. iii), s. 43 (1) (*f*).

Consolidated appeals against two judgments of the West African Court of Appeal.

The appellants, the brothers and sister of one Hagan, a native, deceased, were granted letters of administration of his personal estate in February, 1932. The respondents, Effuah Adum and her children, claimed to be interested in the estate, both real and personal, as the domestic "slave-wife" and children of the deceased. The respondent Arabah claimed to be interested as the head of the family of the deceased. It was agreed that the succession to the estate must be determined according to the native customary law. In the first suit Adum, on behalf of herself and her children, called on the present appellants to declare the value of the estate of the deceased, and to show cause why her share, and that of her children, in the estate should not be designated, Arabah, as head of the family of the deceased, being joined as co-plaintiff in the suit. At the hearing before the Native Tribunal, the appellants objected to its jurisdiction, the objection being over-ruled. The Tribunal held that the value of the personal estate had been proved to be about £15,000, and gave judgment in favour of the respondent Adum and her children for one-fourth, i.e., £3,750, and for one-fourth of the immovable properties. The remaining three-fourths in each case were to be under the control of the respondent Arabah as head of the family. The Court of the Provincial Commissioner and the West African Court of Appeal dismissed appeals from that decision. In the second suit Arabah claimed as head of the family an account of all the personal estate of the deceased, which had come under the control of the appellants before and since the grant of letters of administration, and an administration order with regard to the estate. The Divisional Court (Strother-Stewart, J.) gave judgment for the present appellants, disregarding the decision of the Native Tribunal in the first suit, but on appeal the Court of Appeal granted the respondent the relief claimed by her and against that judgment the second appeal was brought. (*Cur. adv. vult.*)

Lord Thankerton, giving the judgment of the Board, said that the appellants' main contentions challenged the jurisdiction of the Native Tribunal over the subject-matter of the first suit The jurisdiction of a Paramount Chief's Tribunal at the material date was conferred by s. 43 of the Native Administration Ordinance, cap. III, 1928, which provided as follows: "(1) A Paramount Chief's Tribunal shall have . . . civil jurisdiction for the hearing . . . of the causes . . . hereinafter mentioned . . . (2) . . . (*f*) suits and matters relating to the succession to the property of any deceased native . . ." The appellants submitted *inter alia* that a writ to have the estate valued and a share declared was not within head (*f*) of s. 43 (2). That turned on the

proper construction of head (*f*). Counsel submitted that it only included suits as to the right to succeed, and did not include such matters as valuation of the estate, a declaration as to the amount of the share to which a successor was entitled, or the distribution of the estate. Their lordships saw no reason for such a narrow construction of the words "suits and matters relating to the succession to the property," as, in their opinion, distribution of the estate naturally came within the meaning of those words, and valuation of the estate was necessarily incidental to ascertainment of the shares for the purpose of distribution. The first suit was one relating to the succession to the property of the deceased within the meaning of head (*f*) of s. 43 (2). Accordingly both appeals would be allowed, any appeal against the judgment of the Native Tribunal on the merits being time-barred by virtue of s. 76 of the Ordinance.

COUNSEL: *R. Pezzani; Romer*, K.C., and *A. Dor.*
SOLICITORS: *A. L. Bryden & Co.; Linklaters & Paines.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

House of Lords.

Milne *v.* Commissioner of Police, City of London; Leonard *v.* Same; Boundford *v.* Same.

Lord Maugham, L.C., Lord Atkin, Lord Macmillan, Lord Wright and Lord Porter. 27th June, 1939.

GAMING—CLUB—BETS PLACED BY MEMBERS WITH BOOKMAKER BY TELEPHONE—WHETHER OFFENCE COMMITTED—BETTING ACT, 1853 (16 & 17 Vict., c. 119), ss. 1, 3.

Appeals from a decision of the Court of Criminal Appeal, 83 SOL. J. 196.

The members of a certain club used the club premises extensively for the purpose of credit betting, the bets being made mostly with one, Payne, a bookmaker, but also with other bookmakers, by means of two public coin-operated telephones on the club premises. The telephones were rented by the first appellant, Milne, who was tenant of the premises and carried on the business of the club. The other appellants, Boundford and Leonard, were members of the club. Payne had his office some fifty yards from the club premises. He did not visit the club for the purpose of betting, nor was there any ready money betting on the club premises. Payne rented two rooms over the club premises and installed there a clerk who settled accounts with members of the club after the day's racing was over. There was no express agreement between Payne and any of the appellants that any betting facilities should be provided, but they knew of the method by which the betting was carried on. The three appellants were convicted of a conspiracy to keep a betting house contrary to the above section. Milne was also convicted of keeping a betting house, and Boundford of assisting to keep a betting house. Appeals against those convictions were dismissed by the Court of Criminal Appeal. By s. 1 of the Betting Act, 1853: "No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same . . . betting with persons resorting thereto . . ." (*Cur. adv. vult.*)

LORD MAUGHAM, L.C., said that the question "What is a place?" which in other cases had occasioned a good deal of doubt, did not arise in the present case. The difficult question was in relation to the activities of Payne. To justify a conviction under ss. 1, 3 and 4 of the Act of 1853, the place must be opened, kept, or used for one of the two purposes mentioned in s. 1. The first purpose, which was the one asserted to apply in the present case, was that the place was open, kept, or used for the purpose of certain specified persons betting with the members of the club. The prosecution alleged that Payne "used" the club rooms for betting with the members who were there, and the question was whether he did so use them within the meaning of the word "use" in the sentence "for the purpose of the owner, occupier, or keeper thereof or any person using the same" in s. 1. His lordship referred to the speech of Lord Halsbury in *Powell* v. *Kempton Park Racecourse Co.* [1899] A.C. 143, which case the House must follow so far as it applied, and said that he could find no words in any part of the Act, including the preamble, which justified the view that the user involved dominion and control, using the words in the ordinary legal sense. The question was whether Payne, by employing public telephones for the purpose of sending and receiving messages to and from the members in the club, so communicated with, or made such an employment of, the club premises that he was "a person using the same" within the meaning of the Act. The answer must depend on whether the user was in a fair sense a user similar or analogous to that which took place when an owner, occupier, or keeper of a house or place carried on a betting business there with persons resorting to it. He (the Lord Chancellor) was driven to the conclusion that the owner or other persons in control of the place, who opened, kept, or used it for the first purpose mentioned in s. 1 of the Act, were only doing something illegal if the "user" was one which involved that the betting with persons resorting thereto was carried out by the owner, occupier, or keeper, or by a person using the place in a popular sense, who, if not present by himself or some agent or nominee, was permitted to exercise, or in fact exercised, some *de facto* control or some privilege or right over the place in question, not being a control, privilege, or right possessed by the public at large. Such a conclusion might be arrived at if the owner, occupier, or person using the place received a commission on the bets, or if he permitted the bookmaker to instal and use a private telephone, or if he allowed him to stand outside at an open window and to call out the odds. Other examples might be given of permission, express or implied, extended to the bookmaker in, near, or over the room or place for the purpose of enabling him to make bets with persons resorting there which would be special to him, and not given to the public, and clearly allowed to him merely for the purposes of betting. He was unable to see in the present case how the mere use of the public telephone by Payne was sufficient to establish the offence against the appellants. *Samuel* v. *Adelaide Club, Ltd.* [1934] 2 K.B. 69, was distinguishable. The appeals must be allowed.

The other noble Lords concurred.

COUNCIL: *A. T. Denning*, K.C., and *H. C. Leon; J. G. Trapnell*, K.C., and *C. Clarke.*
SOLICITORS: *Docker, Andrew & Co.; The City Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Moss's Empires, Ltd. *v.* Olympia (Liverpool), Ltd.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright and Lord Porter. 29th June, 1939.

LANDLORD AND TENANT—COVENANT BY LESSEE TO SPEND FIXED ANNUAL SUM ON SPECIFIED REPAIRS—SUMS NOT PAID—WHETHER RECOVERABLE BY LESSOR.

Appeal from a decision of the Court of Appeal (Slesser and MacKinnon, L.JJ.; Greer, L.J., dissenting), 82 SOL. J. 564, reversing a decision of Hilbery, J.,

The defendants, Olympia (Liverpool), Ltd., were the assignees of a lease of a cinematograph theatre in Liverpool granted by the plaintiffs in October, 1924. Clause 2 of the lease contained in sub-cls. (iv), (v), (vi) and (viii) a number of repairing covenants which were binding on the defendants. By sub-cl. (vii) the lessees covenanted as follows: "In the performance of the covenants in sub-cls. (iv), (v), (vi) and (viii) herein contained to expend during each year of the said term on such repairs and decorations a sum of £500, and at the end of each year . . . to produce to the lessors evidence of such expenditure or to pay to them at the end of each year a sum equal to the difference between the amount so expended and £500 . . ." From 1932 to 1935 no substantial sum was spent by the defendants on repairs, and they did

not tender any sum representing the difference between the sum expended and £500 in each of those years. The plaintiffs, as lessors, accordingly sued the defendants for a sum representing the sum of those differences less amounts which it was agreed that the defendants had in fact spent in repairs. Hilbery, J., gave the plaintiffs judgment for the sum claimed. The Court of Appeal reversed that decision, holding the action barred by s. 18 (1) of the Landlord and Tenant Act, 1927, in the absence of proof of any diminution in the value of the reversion owing to the breach of covenant. The plaintiffs appealed. (*Cur. adv. vult.*)

LORD ATKIN said that the defendants were not being sued for damages for breach of covenant to repair, but in debt on covenant to pay a fixed sum of money. The covenants, read together, formed part of a carefully devised and co-ordinated arrangement by which, in substance, the liability of the tenant for repairs during the term was limited to £500 a year, which sum he had to pay whether repairs were necessary or not. The amount to be paid was not determined by the amount of damages for breach of repairing covenants, but by the amount in fact expended in performing the repairing covenants. The Landlord and Tenant Act, 1927, had no application; and, if it did not apply in its ordinary and natural construction, there could not be said to exist any principle of law which would avoid an agreement not in terms avoided by the statute sought to be applied. The defence of the statute failed. On the other hand, this was not a bare obligation to pay money which did not touch the thing demised. On the contrary, the performance of the repairing covenants and the obligations under sub-cl. (vii) were so inextricably bound together that it would be impossible to sever sub-cl. (vii) and treat it as a collateral provision to pay money. The relevant clauses read as a whole provided a scheme whereby, if things worked smoothly, the obligation of the tenant over the term was limited to £500 a year, less than one-sixth of the total rent, while the lessor was provided with sums which, if he chose, he might apply towards meeting the obligation which he had assumed of performing structural repairs. In his opinion, the clause in question closely touched the thing demised, and ran with the land The exposition of the clauses given above disposed of the contention that this was a penalty. The sum was payable whether there were breaches or not of the covenants, and was not intended as a substitute for damages. The contention that the determination of the lessors' surveyor as to the amount to be spent on structural repairs was a condition precedent to the payment of £500 could not be supported. It would give the covenant a construction which it would be quite impracticable to fulfil in the ordinary conduct of the lessees' business, and was quite inconsistent with the view expressed above that the £500 must be due though nothing needed to be expended under any obligation to repair The appeal must be allowed and the judgment of Hilbery, J., restored.

The other noble lords concurred.

COUNSEL: *Cyril Radcliffe*, K.C., and *P. B. Morle; C. E. Harman*, K.C., *J. V. Nesbitt*, and *The Hon. B. L. Bathurst.*

SOLICITORS: *Burton & Ramsden; H. S. Wright & Webb.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Spira *v.* Spira.

Scott, Finlay and du Parcq, L.JJ. 27th July 1939.

PRACTICE — ORD. XIV — JUDGMENT — DEFENDANTS NOT ATTENDING—TIME FOR APPEALING EXPIRED—EXTENSION OF TIME REFUSED—APPLICATION UNDER ORD. XXVII, r. 15—R.S.C., ORD. XIV, r. 1, ORD. XXVII, r. 15.

Appeal from Hallett, J.

The plaintiff issued a specially indorsed writ for £1,500, money lent, and interest. A summons for judgment was taken out in 1938. Negotiations for settlement having failed, an order for judgment was made under Ord. XIV, r. 1 in April, 1939. The defendant's solicitor, owing to a mistake, did not put in an affidavit or appear at the hearing. The plaintiff's solicitor having sent him a copy of the judgment, he replied expressing regret and intimating that the defendants must appeal on the ground that if an account were taken nothing would be due from them. He further offered to pay the costs wasted by his failure to appear. Negotiations continued which extended beyond the time limited for appealing against the order. It was suggested that on certain terms the plaintiff should not enforce the judgment. The negotiations having proved abortive, an application was made to extend the time for leave to appeal. This was dismissed. An application was then made under Ord. XXVII, r. 15, to set aside the judgment on the ground that it had been signed in default of appearance. Hallett, J., affirming the decision of the Master, held that this procedure was inappropriate.

SCOTT, L.J., dismissing the defendants' appeal, said that the court was asked to say that (1) there was a default with regard to the proceedings under Ord. XIV by reason of the solicitor's omission to appear, and (2) the delay was due to the negotiations for settlement, so that to do substantial justice the judgment should be set aside. The principles laid down in *Evans* v. *Bartlam* [1937] A.C., at p. 480, should guide the court. Here the plaintiff obtained judgment in strict compliance with the requirements of Ord. XIV. The fault lay on the defendants for not appealing in time. Their application for an extension of time was a matter of pure discretion and on that the judge acted within his powers. On the present appeal there was no such "default" in the proceedings under Ord. XIV as was contemplated by Ord. XXVII, r. 15. The court's discretion should not be exercised in favour of the defendants, who negotiated though they had complete knowledge of the situation and only when the negotiations ended decided that they would like to vacate the judgment. They were then too late.

COUNSEL; *G. O. Slade; Morle.*

SOLICITORS: *Lucien Fior; H. M. Lyell.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Henderson *v.* Clifford Watmough & Co.

Scott, Clauson and du Parcq, L.JJ.
17th, 18th and 25th July, 1939.

DAMAGES — COUNTY COURT — JUDGE'S AWARD — APPEAL — AMOUNT ALLEGED TO BE SO SMALL AS TO BE ENTIRELY ERRONEOUS ESTIMATE—WHETHER APPEAL MAINTAINABLE.

Appeal from Manchester County Court.

A seventeen-year-old factory worker suffered injuries necessitating the amputation of two joints of the second finger of her right hand. In an action by her against the defendants for damages for negligence, liability was admitted. The county court judge awarded her £85, including £16 special damage. The plaintiff appealed on the ground that the amount was so small as to make it an entirely erroneous estimate.

DU PARCQ, L.J., delivering the court's judgment dismissing the appeal, said that there was no jurisdiction to review the decision unless the judge had erred "in point of law." If it was manifest that the judge must have decided a matter of law erroneously the court was bound to revise his decision (*Cawley* v. *Furnell*, 12 C.B., at p. 302). The principles of law applicable to the case were (1) that certain well-recognised kinds of damage should be taken into consideration, and (2) that such a sum should be awarded as would reasonably compensate the plaintiff. It was conceded that there was no ground for saying that the judge had omitted to take any particular head of damage into consideration. It was said that the sum awarded was so inadequate that he must have come to an erroneous decision on some unspecified point of

law. It was pointed out that the sum awarded to compensate the plaintiff for her permanent disability with all its possible consequences and for pain and suffering was only £69. If it were granted for the sake of argument that the sum was insufficient to compensate the plaintiff it might be said that the judge fell into error, but it did not follow that his decision was wrong "in point of law." To reach the sum to be awarded the judge had to make up his mind what facts were proved and then be guided by his knowledge of the world and of social conditions, and by "reasonable common sense" (*Phillips* v. *South Western Railway Co.*, 5 Q.B.D., at p. 79). The question was eminently one of fact. On facts the judge's decision was unassailable in the Court of Appeal. Here nothing justified the inference that if the judge erred he erred in point of law. In this connection it was not useful to consider decisions as to the duty of the Court of Appeal in considering appeals against the verdict of a jury or the decision of a High Court judge sitting without a jury. The rules laid down in *Roach* v. *Yates* [1938] 1 K.B., at p. 265, and *Flint* v. *Lovell* [1935] 1 K.B., at p. 360, showed that the Court of Appeal when not bound by any statutory provision such as that applicable here (County Courts Act, 1934, s. 105) would in a proper case set aside a decision which might be truly said to be one of fact.

COUNSEL: *N. Lever; Fenton Atkins.*

SOLICITORS: *L. Bingham & Co.*, for *Linder, Myers and Pariser*, of Manchester; *James Chapman & Co.*, of Manchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Milbank *v.* Milbank.

Sir Boyd Merriman, P. 27th July, 1939.

DIVORCE — DESERTION — HUSBAND'S PETITION — WIFE'S EARLIER COLLUSIVE PETITION WITHIN STATUTORY PERIOD —WIFE'S PETITION DISMISSED—PERIOD OF DESERTION HELD INTERRUPTED BY WIFE'S PETITION.

This was a husband's petition for dissolution of marriage on the ground of desertion, adjourned for argument by the King's Proctor as to whether, there having been presented against the husband within the statutory period of three years, a petition by the wife, in collusion with him, presentation of that earlier petition prevented desertion from running. The parties were married in 1922. In 1929 the wife deserted the husband. In April, 1936, as a result of negotiations and correspondence, the wife in collusion with the husband presented a petition for divorce on the ground of adultery. In 1937 that petition was dismissed on the ground of collusion, on the wife's application, the matter having been sent for investigation by the King's Proctor. On 26th August, 1938, the husband filed the present petition for divorce on the ground of desertion. There was an adjournment of the hearing, before evidence given, in order that the court might have the assistance of counsel for the King's Proctor, both on the facts as well as the law.

Sir BOYD MERRIMAN, P., in giving judgment, said that the question of law which emerged was whether it were possible for the husband to assert that during the statutory period his wife was deserting him without cause. It was quite clear that, if the husband himself had presented that petition, it would be impossible for him to assert that, during its continuance on the file of the court, his wife's absence continued to have the quality of desertion. That was established by the decision of the Court of Appeal in *Stevenson* v. *Stevenson* [1911] P. 191, where, delivering the judgment of the court, Sir H. H. Cozens-Hardy, M.R., stated, at p. 194: "The presentation of the petition [in that case after eighteen months of desertion] and its continuance on the files of the court prevented the subsequent desertion from being without excuse. She was praying the court to require her husband to keep away." However, the petition was not presented by the present petitioner, the husband, but by a deserting wife. If that petition, unsuccessful as it turned out to be, had been presented by the wife *in invitum*, the husband would not have been precluded on its dismissal from counting the period during which that petition was on the file of the court as part of the necessary three years' period. In *Chapman* v. *Chapman* [1938] P. 93, the law had been declared as follows: The deserting spouse against whom such an unsuccessful petition was brought might cross-charge desertion, and was not precluded from counting the period between the presentation of the petition and the presentation of the cross-charge by the fact that there was on the file of the court a petition the result of which would be no doubt for the time being that the deserting spouse could have got an order preventing her husband from attempting to resume cohabitation. That case also went further in deciding that though it might be necessary to substitute further proceedings on the part of the deserting spouse to establish his or her rights, the interval between the presentation of the first cross-charge and any subsequent cross-charge was immaterial, having regard to the fact that the proceedings all the time were being prosecuted by the husband on his initiation. Of course, there was no obligation on a party to recriminate or make cross-charges, if the first petition were unsuccessful and were disposed of, the deserted spouse could subsequently bring proceedings for desertion to which the period during which that petition was on the file could establish no bar at all. It had been admitted in the plainest and most categorical terms that the earlier petition in the present case had been instituted and prosecuted at the husband's instance, by his procurement, by his agreement, at his expense, agreed to in advance, and that every single thing which was done in order to enable his wife to get a divorce "as for a real injury," to quote Sir William Scott again, was done by agreement between the parties that the husband should "commit or appear to commit a fact of adultery." The point of the decision in *Stevenson* v. *Stevenson*, *supra*, followed as it had been recently by the Court of Appeal in *Cohen* v. *Cohen* (1939), 2 All E.R. 596; [1939] W.N. 199; 53 SOL. J. 241, was that whatever might be the continuing intention of the deserting spouse, the deserted spouse was precluded from saying that a state of desertion continued while he or she was praying the court by proceedings instituted by him or her to keep away. That was the effect of the wife's proceedings, which would be no handicap to the husband if he had no part or lot in it. However, they had been brought about by his procurement, by his agreement in the fullest sense of the word. It would be impossible in law, without ignoring the decision of the Court of Appeal in *Stevenson* v. *Stevenson*, *supra*, and the various cases under the 1937 Act in which judges had followed and applied that decision to cases of desertion under the Act, to allow a husband to say that the twelve months, during which a collusive petition had been actively prosecuted, was a period during which his wife was deserting him without cause. He was paying her to pray the court to require him to keep away. In the circumstances the husband had failed to establish that which he was bound to prove. The petition would therefore be dismissed.

COUNSEL: *Hon. Victor Russell*, for the petitioner; *Theodore Turner*, for the King's Proctor.

SOLICITORS: *Gedge, Fiske and Co.; The Treasury Solicitor.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Underwood *v.* Underwood and Haigh (Pocock showing Cause).

Hodson, J. 27th July.

DIVORCE—COSTS—DECREE NISI AGAINST CO-RESPONDENT WITH COSTS—INTERVENTION BY MEMBER OF PUBLIC—FINDING OF NO ADULTERY—ORDER FOR COSTS TO STAND.

This was a summons by a respondent wife to rescind a decree *nisi* of divorce granted to the petitioner, together with orders against the co-respondent for damages and costs.

At the hearing in October, 1938, the suit was undefended and the petitioner was granted a decree *nisi* with costs, and awarded £100 damages and costs against the co-respondent. In March, 1939, the respondent and the co-respondent applied unsuccessfully to the Court of Appeal for leave to apply out of time for a new trial. Finally, the respondent's brother, William John Pocock, obtained leave to intervene in the suit as a member of the public to show cause why the decree *nisi* should not be made absolute on the ground that the respondent and co-respondent had not in fact committed adultery. Trial of the same being ordered, the respondent's brother was the plaintiff, and the petitioner the defendant. On 11th July, 1939, Henn Collins, J., found on the issue that adultery had not been committed, but stated that he was not prepared himself to deal with the results of such finding, and the present matters fell to be dealt with on summons. The co-respondent was not represented on the summons. Counsel, on behalf of the respondent applicant, submitted that: As a result of the judgment of Henn Collins, J., the decree granted to the petitioner should be rescinded and the petition dismissed. There being no finding of adultery against the respondent and co-respondent, the orders against the co-respondent for damages and costs should be rescinded also. Counsel, on behalf of the petitioner, stated that he could not resist the application in so far as it related to the rescission of the decree, the dismissal of the petition and the rescission of the order as to damages, but submitted that the order for costs should not be reversed. The petitioner had done nothing to which anyone could take objection. The petition and all subsequent process were properly served. The reason why the suit was undefended was, according to the affidavits, the negligence of the advisers of the wife and the co-respondent. It would be a great hardship on the petitioner, who was in no way at fault, if he had to bear the whole cost of the proceedings. There was no real ground upon which it could be said that costs should be taken away from the petitioner. The co-respondent could take steps against those advising him, which were not open to the petitioner.

HODSON, J., said that he thought that the decree *nisi* must be rescinded and also the order for damages. The order for costs must stand and the co-respondent be left to his remedy, if any. There would be no order as to the costs of the present application.

COUNSEL: *Lord Drogheda* (*Hon. Victor Russell* with him), for the respondent in the suit the applicant; *J. B. Latey* and *J. L. S. Hale*, for the petitioner in the suit, the respondent to the summons.

SOLICITORS: *Piper, Smith & Piper; T. & N. Blanco White.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

The Law Society.

Sir,—As a solicitors' managing clerk, recently thrown out of employment at the age of forty-five years, I should like to offer my support of the protest made by Mr. Syrett.

It is quite untrue to say, as your footnote does, that much of the work of the Society is being continued at Chancery Lane.

The register of situations vacant and wanted has been removed to Newbury, so that I am quite unable to exercise my right, having paid the necessary fee, to call and inspect the list of vacancies; neither can solicitors get into touch with me in London. Surely there was no necessity for removing the registry. I am still out of a job, though there must be many solicitors with depleted staffs who could do with my services.

London, S.E.15, G. W. KELLOCH.
25th September.

Powers of Attorney by Trustees serving abroad.

Sir,—With reference to your issue of the 16th instant, and the form of declaration appended to Messrs. Gregory, Rowcliffe & Co.'s letter, we submit that if the Senior Master will accept para. 3 up to the word "true" a very useful concession will have been made, but if the paragraph proceeds to indicate that the declaration is made pursuant to the Statutory Declarations Act, 1835 (as no contrary intention appears on the face of the form), such declaration means a declaration made by virtue of the Statutory Declarations Act, 1835 (Interpretation Act, 1889, s. 21), and accordingly must be declared before a person competent to take statutory declarations under the Act of 1835.

Ulverston. N. E. BARNES & JACKSON.
16th September.

War Legislation.

(*Supplementary List, in alphabetical order, to those published in* THE SOLICITORS' JOURNAL, *dated September 16th and 23rd.*)

Progress of Bills.

House of Lords.

Courts (Emergency Powers) (Scotland) Bill.
Read First Time. [28th September.

Education (Emergency) Bill.
Read First Time. [27th September.

Education (Emergency) (Scotland) Bill.
Read First Time. [27th September.

Executive Trusts (Emergency Provisions) Bill.
Read First Time. [28th September.

House of Commons.

Finance (No. 2) Bill.
Read First Time. [29th September.

Statutory Rules and Orders.

No. 1134. **Air Navigation.** (Colonies, Protectorates and Mandated Territories) (Amendment) Order in Council, dated September 2.

No. 1210. **County Court, England.** Courts and Districts. The County Courts (Emergency Provisions) Order, 1939, dated September 13.

No. 1223. **Courts** (Emergency Powers) (No. 2) Rules, dated September 20.

No. 1238. **Customs.** Export Licence—Road Vehicles. Open General Export Licence for Motor Cars, dated September 20.

No. 1208. Customs. Export Licences. Open General Export Licence for certain Foodstuffs, dated September 16.

No. 1051. Customs. Export Licence—Eire. Open General Export Licence, dated September 2—No. G.L. 205 (Amended Reprint).

No. 1239. Customs. The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment Order, dated September 20.

No. 1246. Customs. The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment (No. 2) Order, dated September 21.

No. 1188. **Economic Warfare,** Minister of. The Minister of Economic Warfare Order in Council, dated September 5.

No. 1185. **Emergency Powers** (Defence). Order in Council, dated September 8, amending the Defence Regulations, 1939.

No. 1184. Emergency Powers (Defence). Order in Council, dated September 2, amending Regulation 28 (2) of the Defence Regulations, 1939.

No. 1234. Emergency Powers (Defence). Order in Council, dated September 21, amending Regulation 53 (2) of the Defence Regulations, 1939.

No. 1270. Emergency Powers (Defence). The Control of Flax (No. 3) Order, dated September 19.

No. 1216. Emergency Powers (Defence). The Control of Growing Trees (No. 2) Order, dated September 13.

No. 1272. Emergency Powers (Defence). The Control of Iron and Steel (No. 2) Order, dated September 22.

No. 1169. Emergency Powers (Defence). The Control of Noise (Defence) Order, dated September 1.

No. 1183. Emergency Powers (Defence). The Control of Timber (No. 2) Order, dated September 13.
No. 1217. Emergency Powers (Defence). The Control of Timber (No. 3) Order, dated September 15.
No. 1218. Emergency Powers (Defence). The Control of Timber (No. 4) Order, dated September 15.
No. 1219. Emergency Powers (Defence). The Control of Tin (No. 1) Order, dated September 17.
No. 1186. Emergency Powers (Defence). The Defence (Finance) Regulations (Isle of Man) Amendment Order in Council, dated September 4.
No. 1236. Emergency Powers (Defence). The Defence (Savings Bank) Regulations Amendment Order in Council, dated September 21.
No. 1235. Emergency Powers (Defence). The Defence (War Risks Insurance) Regulations, Order in Council, dated September 21.
No. 1181. Emergency Powers (Defence). Docks and Harbours. The Government Explosives in Harbours Order, dated September 4.
No. 1206. Emergency Powers (Defence). Finance. The Currency Restrictions (Traveller's Exemption) Order, dated September 15.
No. 1250. Emergency Powers (Defence). The Food Control Committees (England and Wales and Northern Ireland) Enforcement Order, dated September 21.
No. 1172. Emergency Powers (Defence). Food. The Butter (Provisional Maximum Prices) Order, dated September 13.
No. 1212. Emergency Powers (Defence). Food. The Condensed Milk (Provisional Prices) Order, dated September 15.
No. 1244. Emergency Powers (Defence). Food. The Dried Fruits (Maximum Prices) Order, dated September 19.
No. 1170. Emergency Powers (Defence). Food. The Eggs (Maximum Prices) Order, dated September 13.
No. 1213. Emergency Powers (Defence). Food. The Feeding-Stuffs (Provisional Control) Order, dated September 18.
No. 1254. Emergency Powers (Defence). Food. The Fish (Provisional Control) (Revocation) Order, dated September 22.
No. 1199. Emergency Powers (Defence). Food. The Imported Bacon and Hams (Requisition) Order, dated September 15.
No. 1149. Emergency Powers (Defence). Food. The Potatoes (Provisional Prices) Order, dated September 9.
No. 1200. Emergency Powers (Defence). Food. The Potatoes (Provisional Prices) (No. 2) Order, dated September 15.
No. 1215. Emergency Powers (Defence). Land Cultivation (Northern Ireland). The Tillage (Northern Ireland) General (No. 1) Order, dated September 15.
No. 1201. Emergency Powers (Defence). The Milk Products Marketing Scheme, 1939 (Modification and Suspension) Order, dated September 14.
No. 1203. Emergency Powers (Defence). The Persian Gulf States (Emergency) Order in Council, dated September 5.
No. 1182. Emergency Powers (Defence). Pigeons—Isle of Man. Order, dated September 13.
No. 1241. Emergency Powers (Defence). The Prohibition of Public Entertainments (Defence) Order, dated September 3.
No. 1242. Emergency Powers (Defence). The Public Entertainments (Restriction) Order, dated September 8.
No. 1243. Emergency Powers (Defence). The Public Entertainments (Restriction) (No. 2) Order, dated September 14.
No. 1214. Emergency Powers (Defence). The Railways (Notice of Accidents) Modification Order, dated September 14.
No. 1220. **Factories.** Order, dated September 16, in relation to the Felt Hat Industry.
No. 1119. **Food, Minister of.** The Ministers of the Crown (Minister of Food) Order in Council, dated September 8.
No. 1189. **Information, Minister of.** The Minister of Information Order in Council, dated September 5.
No. 1144. **Juvenile Courts, England.** The Juvenile Courts (Metropolitan Police Court Area) Order, dated September 11.
No. 1224. **Merchant Shipping.** Safety Convention. Order in Council, dated September 5, declaring that the Government of Chile has acceded to the Safety Convention.
No. 1192. **Merchant Shipping and Air Navigation.** The Ships and Aircraft (Transfer Restriction) (Channel Islands) Order in Council, dated September 5.
No. 1247. **National Registration** (Appointed Time) Order, dated September 11.
No. 1193. National Registration (Isle of Man Application) Order in Council, dated September 8.
No. 1118. **National Service, Minister of.** The Minister of National Service Order in Council, dated September 8.
No. 1194. **Pension** (Navy, Army and Air Force, Nursing and Auxiliary Services) Transfer of Powers Order in Council, dated September 4.
No. 1167. **Prevention of Fraud** (Investments) Act Licensing Regulations (No. 2), dated September 13.
No. 1136. **Prize Courts.** The North Borneo Prize Court Order in Council, dated September 2.
No. 1137. Prize Courts. The Supreme Court of Palestine (Prize) Order in Council, dated September 2.
No. 1138. Prize Courts. The Zanzibar (Prize Court) Order in Council, dated September 2.
No. 848. **Supreme Court, Northern Ireland.** Procedure Rules, dated August 31, substituting New Rules for the Rules of Orders LXX and LXXI, and altering certain Rules in Orders VII, XI and XXX.
No. 1211. **Trade Boards** (Rubber Reclamation Trade, Great Britain) (Constitution and Proceedings) Regulations, dated September 15.
No. 1198. **Trading with the Enemy** (Custodian) Order, dated September 16.
No. 1147. **Unemployment Assistance** (Prevention and Relief of Distress) Regulations, dated September 6.
No. 1148. **Unemployment Insurance** (Emergency Powers) Regulations, dated September 6.
No. 1091. **Wheat** (Anticipated Supply) No. 2 Order, dated September 7.
No. 1092. Wheat (Quota Payments: Standard Amount) No. 1 Order, dated September 7.

Provisional Rules and Orders.

Air Navigation (Provisional), Order in Council, dated September 2.
Juvenile Courts, England. The Juvenile Courts (Constitution) Rules, dated September 12.

Copies of the above Bills, S.R. & O.'s and P.R. & O.'s can be obtained through The Solicitors' Law Stationery Society, Limited, 22, Chancery Lane, London, W.C.2, and Branches.

Societies.

The Law Society.

The Council of The Law Society make the following announcements affecting their Examinations and the service of Articled Clerks:—

(1) The October, 1939, Preliminary Examination and the November, 1939, Intermediate, Final and Honours Examinations will be held in London, as advertised, unless unforeseen circumstances arise, in which case other arrangements will be made.

(2) The Preliminary, Intermediate and Final Examinations will be held in 1940, as advertised.

(3) No separate Honours Examination will be held after November, 1939, during the period of the war, but "distinction" will be awarded at the Final Examination to those candidates who would normally have qualified to sit for the Honours Examination, and any candidate awarded "distinction" may be permitted, at the discretion of the Council, to enter for any Honours Examination held within two years after the cessation of hostilities.

(4) The Council wish it to be known that the Examination Committee have power, in special circumstances, to allow a clerk articled for five or four and a half years to take the Intermediate Examination at any time after the execution of articles.

(5) The Law School will remain closed until further notice.

(6) Upon application the Secretary of the Society is authorised to issue a consent in writing under Section 7 (1) of the Solicitors Act, 1936, dispensing with the necessity for commencing attendance at a Law School within fifteen months after the execution of articles of clerkship, in cases where the Law School at which the attendance would normally be made has been closed on account of the war, or where a clerk is unable to attend owing to his engagement on National Service.

(7) No prize studentship will be awarded where the Law School at which the student is attending is closed, or the student is absent on National Service.

(8) The Council intend to promote legislation to enable them—

(*a*) to reduce, if necessary, after 1940, the number of their Examinations to be held annually;

(*b*) to allow, at their discretion, an articled clerk to enter for the Final Examination before the prescribed date;

(*c*) to permit, at their discretion, to count as good service under articles the time during which the articled clerk may be engaged on National Service either with His Majesty's Forces or otherwise, subject to every clerk being required to serve a minimum period of two years under articles in the office of his principal;

(*d*) to exempt an articled clerk, at their discretion, in circumstances arising out of the war from the necessity of taking the Intermediate Examination;

(*e*) to suspend the award of all prizes during the continuance of hostilities;

(*f*) to permit, at their discretion, any student who has attended part of a "course before articles" before the beginning of hostilities, to count the time spent at his Law School as service under articles, where the course at the Law School has been suspended or the student is unable to complete the course on account of his engagement on National Service.

General Council of the Bar.

BUSINESS OF THE COURTS.

MICHAELMAS SITTINGS.

The Council has been notified that the Lord Chancellor and the Lord Chief Justice have discussed the arrangements to be made in connection with the discharge of business at the Courts during the coming term.

The Courts will sit at 10 a.m. and rise at 3.30 p.m.

ADMINISTRATION OF JUSTICE (EMERGENCY PROVISIONS) ACT, 1939, s. 8 (1).

Any cause or matter in the King's Bench Division ordered to be tried before a Jury prior to the coming into operation of this Act, shall be placed in the appropriate Non-Jury List and take its place in such list according to the date of entry for trial, unless the Court or a Judge makes an Order for trial with a Jury subsequent to the coming into operation of the Act.

It is proposed to issue before term begins three lists of cases, namely:—

1. Cases to be taken immediately;
2. Cases not to be taken before the 12th October;
3. Cases not to be taken before the 19th October;

and from time to time to issue further lists on the same principle.

Public galleries will be closed.

It is undesirable that there should at any time be in any court a greater concourse of people than is absolutely necessary because the air-raid shelters are not meant to take any more than a certain definite number.

5, Stone Buildings, Lincoln's Inn. E. A. GODSON, *Secretary.*

26th September, 1939.

Rules and Orders.

THE COUNTY COURTS (EMERGENCY PROVISIONS) ORDER, 1939.

DATED SEPTEMBER 13, 1939.

[S.R. & O., 1939, No. 1210/L.20. Price 1d. net.]

I, Thomas Walker Hobart Viscount Caldecote, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 2 of the County Court Act, 1934,* and all other powers enabling me in this behalf, do hereby order as follows:—

1. The holding of the Greenwich County Court shall be discontinued and the district of that Court shall be consolidated with the district of the Woolwich County Court, and the Woolwich County Court shall have jurisdiction as respects proceedings commenced in Greenwich County Court before this Order comes into operation.

2. The holding of the Waltham Abbey County Court shall be discontinued and the district of that Court shall be consolidated with the district of the Edmonton County Court, and the Edmonton County Court shall have jurisdiction as respects proceedings commenced in Waltham Abbey County Court before this Order comes into operation.

3.—(1) The holding of the Thame County Court shall be discontinued and the district of that Court shall be consolidated with the district of the Oxford County Court, and the Oxford County Court shall have jurisdiction as respects proceedings commenced in Thame County Court before this Order comes into operation.

(2) For the transaction of business relating to proceedings in the Oxford County Court, there shall be an office of the said Court at Thame in addition to the Offices at Oxford and Abingdon.

4. This Order may be cited as the County Courts (Emergency Provisions) Order, 1939, and shall come into operation on the 25th day of September, 1939.

Dated this 13th day of September, 1939.

Caldecote, C.

* 24 & 25 Geo. 5, c. 53.

THE COURTS (EMERGENCY POWERS) (NO. 2) RULES, 1939.

DATED SEPTEMBER 20, 1939.

[S.R. & O., 1939, No. 1223/L. 21. Price 1d. net.]

I, Thomas Walker Hobart Viscount Caldecote, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 2 of the Courts (Emergency Powers) Act, 1939*, and all other powers enabling me in this behalf, do hereby make the following Rules:—

1. The following Rule shall be inserted after Rule 4 of the Courts (Emergency Powers) Rules, 1939† (hereinafter called "the principal Rules"), and shall stand as Rule 4A:—

"4A.—(1) *Distress for rates.*—The appropriate court for giving leave to levy a distress for rates shall be the court having jurisdiction to issue the warrant of distress.

(2) This Rule shall have effect notwithstanding anything in the foregoing provisions of these Rules."

2. The following Rule shall be inserted after Rule 16 of the principal Rules, 1939, and shall stand as Rule 16A:—

"16A.—(1) *Courts for recovery of rates.*—In proceedings for the recovery of rates, the application for leave to levy a distress may be made at the hearing of the summons for non-payment of rates if a notice to the effect of Form No. 9 has been served on the defendant in the manner in which such a summons may be served not less than two clear days before the hearing of the summons.

(2) No warrant of distress for rates shall issue unless the Court is satisfied that a notice has been served in accordance with the provisions of the last preceding paragraph.

(3) If a warrant of distress for rates has, whether before or after the commencement of the Act, been issued without leave having been given under the Act, and the distress has not been levied, an application for leave to levy the distress may be made to the Court at the hearing of a summons in a form adapted from Form No. 4 and served on the defendant in the manner in which a summons for non-payment of rates may be served."

3. The following Form shall be added to the Schedule to the principal Rules, 1939:—

"9.

Notice to accompany Summons for Rates.

(*Title as in Summons.*)

Under the Courts (Emergency Powers) Act, 1939, a person is not entitled to exercise a remedy by way of the levying of distress except with leave of the Court, and if the Court is of opinion that the person liable to pay the sum in question is unable immediately to do so by reason of the circumstances directly or indirectly attributable to the present war, the Court may refuse leave to exercise the remedy, or may give leave to exercise it subject to such restrictions and conditions as the Court thinks proper.

If you desire to take advantage of the protection afforded by the said Act and attend the hearing of this summons [*or* the accompanying summons] [*or*, the summons served upon you on the day of , 19], you will have an opportunity of showing cause why the discretion of the Court should be exercised in your favour."

4. In the last paragraph of Form No. 1 in the Schedule to the principal Rules "counter-notice" shall be substituted for "counter-claim."

5. These Rules may be cited as the Courts (Emergency Powers) (No. 2) Rules, 1939.

Dated this 20th day of September, 1939.

Caldecote, C.

* 2 & 3 Geo. 6, c. 67. † S.R. & O., 1939, No. 995

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. CECIL ROBERT HAVERS, K.C., be appointed Recorder of Chichester to succeed the late Mr. Walter Frampton.

The Lord Chancellor has appointed Mr. EDWARD LYNCH LIGHTFOOT to be Joint Registrar of the Oxford County Court as from the 25th September, 1939.

The Viscounty of the United Kingdom conferred on LORD MAUGHAM, lately Chancellor of Great Britain, has been gazetted by the name, style and title of VISCOUNT MAUGHAM, of Hartfield, in the County of Sussex.

Mr. R. G. ROSE, the Bedford Coroner, has been appointed, in addition to his present post, Coroner for North Bedfordshire, and Mr. J. H. HOARE, of Dunstable, has been appointed Coroner for South Bedfordshire. Both appointments fill the vacancy created by the death of Mr. G. J. M. Whyley.

Mr. WILLIAM BERNARD BLATCH, solicitor, has been appointed Solicitor to the Board of Inland Revenue in succession to Sir John Houldsworth Shaw, who is retiring from the public service on 18th October.

Notes.

As and from the 4th October the sittings of the Courts of the Supreme Court and the High Court of Justice will commence at 10 a.m. and finish at 3.30 p.m. on every day except on Saturday.

The Home Secretary has made an Order appointing 1st October as the date on which the Factories Act provisions restricting the hours of boys and girls under sixteen years of age to forty-four a week are to take effect in the felt hat industry. Application was made for permission to exceed forty-four hours, but the Home Secretary is not satisfied that the specified conditions are fulfilled.

War Time Addresses.

(In alphabetical order.)

ALDERSON, SMITH & HUGHES, 1, Norwood Gardens, Willow Tree Lane, Hayes, Middlesex.

BIRCHAM & Co., Greenworld, Warningled, Haywards Heath, Sussex.

JOHN B. BORER, "Hampstead," 24, Pheasants Way, Rickmansworth, Herts.

FREDK. A. COX, "Broomham," Guestling, Sussex.

T. E. CROCKER & SON, 9, Lauderdale Road, Petersham, Richmond, Surrey.

HORACE DAVEY, Stoney Ware, Bisham, Marlow, Bucks.

ARTHUR G. DENNIS, Bovington Grange, Bovington, Herts.

EDWIN, SON & EDGLEY, 61, Victoria Row, Wimbledon Common, London, S.W.12.

HANBURY, WHITTING & INGLE, 10, The Grange, Wimbledon, London, S.W.19.

HEALD, JOHNSON & LISTER, 111, Woodville Road, New Barnet, Herts.

HOWARD & Co., 112, Whytecliffe Road, Purley, Surrey.

LYDALL & SONS, Solicitors, Reading, Berks.

POLLARD, GENESE & Co., 155, South Ealing Road, London, W.5.

OLIVER RICHARDS & PARKER, "Pasturehill," Lucastes Avenue, Haywards Heath, Sussex.

VIVASH ROBINSON & Co., 161A, Central Road, Worcester Park, Surrey.

ROGERS, ABBOTT & DRUMMOND, 2, York Street, Twickenham, Middlesex.

ROWE & WILKIE, 38, Chatsworth Avenue, Grove Park, Bromley, Kent.

SIMMONS & SIMMONS, Albany House, The Avenue, Egham, Surrey.

DANIEL A. R. THOMAS, 182, High Street, Acton, London, W.

J. PAGE THOMAS, St. Lawrence, Yester Park, Chislehurst, Kent.

H. K. TURNER, 3, St. Paul's Court, Standard Road, Hounslow West, Middlesex.

UPTON, BRITTON & LUMB, 34, Parkway, Raynes Park, London, S.W.20. Telephone: Liberty 1798.

WIGRAM & Co., 111, Dorchester Avenue, Palmers Green, London, N.13.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (28th September 1939) 3%. Next London Stock Exchange Settlement, Thursday, 12th October 1939.

	Div. Months.	Minimum Price 27 Sept. 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	98½	4 1 3	—
Consols 2½%	JAJO	62	4 0 8	—
War Loan 3½% 1952 or after	JD	88½	3 19 1	—
Funding 4% Loan 1960-90	MN	100¼xd	3 19 7	3 19 3
Funding 3% Loan 1959-69	AO	87½	3 8 7	3 13 10
Funding 2¾% Loan 1952-57	JD	88½	3 2 2	3 12 8
Funding 2½% Loan 1956-61	AO	79¾	3 2 8	3 17 8
Victory 4% Loan Av. life 21 years	MS	102	3 18 5	3 17 2
Conversion 5% Loan 1944–64	MN	103⅜xd	4 16 4	3 19 4
Conversion 3½% Loan 1961 or after	AO	87½	4 0 0	—
Conversion 3% Loan 1948-53	MS	94½	3 3 6	3 10 9
Conversion 2½% Loan 1944-49	AO	93½	2 13 8	3 6 10
National Defence Loan 3% 1954-58	JJ	92	3 5 3	3 11 9
Local Loans 3% Stock 1912 or after	JAJO	73¼	4 1 11	—
Bank Stock	AO	289xd	4 3 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	67	4 2 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	75	4 0 0	—
India 4½% 1950-55	MN	104	4 6 6	4 0 10
India 3½% 1931 or after	JAJO	79½	4 8 4	—
India 3% 1948 or after	JAJO	66¼	4 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	103	4 7 5	4 6 3
Sudan 4% 1974 Red. in part after 1950	MN	100	4 0 0	4 0 0
Tanganyika 4% Guaranteed 1951-71	FA	100	4 0 0	4 0 0
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	101	4 9 1	4 0 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	83	3 0 3	3 19 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	88	4 10 11	4 15 0
Australia (Commonw'th) 3% 1955-58	AO	70½xd	4 5 1	5 11 0
*Canada 4% 1953-58	MS	103	3 17 8	3 15 9
Natal 3% 1929-49	JJ	90	3 6 8	4 8 10
New South Wales 3½% 1930-50	JJ	82	4 5 4	5 15 0
New Zealand 3% 1945	AO	81½	3 13 7	7 1 7
Nigeria 4% 1963	AO	98xd	4 1 8	4 2 8
Queensland 3½% 1950-70	JJ	80	4 7 6	4 15 4
South Africa 3½% 1953-73	JD	90	3 17 9	4 0 11
Victoria 3½% 1929-49	AO	82¼	4 5 1	5 18 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	73	4 2 2	—
Croydon 3% 1940–60	AO	83½	3 11 10	4 3 11
Essex County 3½% 1952-72	JD	95½	3 13 4	3 14 10
Leeds 3% 1927 or after	JJ	75	4 0 0	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	86¼	4 1 2	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	59	4 4 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	72	4 3 4	—
Manchester 3% 1941 or after	FA	73	4 2 2	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 9 2
Metropolitan Water Board 3% "A" 1963-2003	AO	71½	4 3 11	4 6 5
Do. do. 3% "B" 1934-2003	MS	74	4 1 1	4 3 4
Do. do. 3% "E" 1953-73	JJ	84	3 11 5	3 17 1
*Middlesex County Council 4% 1952-72	MN	103	3 17 8	3 14 1
* Do. do. 4½% 1950-70	MN	106	4 4 11	3 16 5
Nottingham 3% Irredeemable	MN	76	3 18 11	—
Sheffield Corp. 3½% 1968	JJ	93	3 15 3	3 18 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS		Middle Price.		
Gt. Western Rly. 4% Debenture	JJ	93½	4 5 7	—
Gt. Western Rly. 4½% Debenture	JJ	102½	4 7 10	—
Gt. Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Gt. Western Rly. 5% Rent Charge	FA	106	4 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	99½	5 0 6	—
Gt. Western Rly. 5% Preference	MA	80	6 5 0	—
Southern Rly. 4% Debenture	JJ	93½	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed	MA	105	4 15 3	—
Southern Rly. 5% Preference	MA	80	6 5 0	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.